IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2342 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC THROUGH DIVISIONAL CONTROLLER - Petitioner(s)
Versus
HANIFABEN ABDULBHAI VOHRA - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR KD PANDYA for Respondent(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/07/2007

ORAL JUDGMENT

1. Heard Mr.H.S. Munshaw, learned counsel for the petitioner and Mr.K.D. Pandya, learned counsel for the respondents.

2. Gujarat State Road Transport Corporation, being aggrieved by the order dtd.7/7/1995 passed by the Labour Court, Nadiad in Recovery Application No.17 of 1993, filed under sec.33-C-2 of the Industrial Disputes Act, is before this Court with a submission that in view of the special facts and circumstances of the case, the court below was absolutely unjustified in granting the application.

3. The petitioner, while on duty was transferred, because of his alleged misconduct in making an attack on the officer of the Corporation. He did not join at the transferred place, therefore, he was placed under suspension. However, chargesheet could not be served upon the workman and inquiry could not be concluded within a period of 60 days, therefore, the order of suspension was withdrawn. Despite withdrawal of the order of suspension, the respondent workman did not choose to join at the place of transfer, however, he filed an application before the learned Labour Court to obtain an interim order, which the Labour Court granted in favour of the workman. The establishment / employer submitted that before the service of the interim order, the transfer order and suspension order were already implemented, therefore,

such proceedings could not be continued. The workman, being aggrieved by the said stand taken by the establishment, filed a contempt petition but later on withdrew the same.

4. In reply to the application filed under sec.33-C-2 of the Industrial Disputes Act, the establishment submitted that the workman was not entitled to any salary or salary for the period of suspension or for bonus etc., as he had not earned it and had also not complied with the order of transfer.

5. The learned Labour Court made an inquiry into the allegations and counter allegations and directed the establishment to make payment of the salary with bonus.

6. Mr.Munshaw, learned counsel for the petitioner employer, placing reliance upon the judgement of the Apex Court in the matter of Municipal Corporation of Delhi, reported in of (1995) 1 SCC 235 submitted that the proceedings under sec.33-C-2 of the Industrial Disputes Act are in nature of execution petition and unless there is pre-adjudicated right, pre-existing right and undisputed right, a Labour Court cannot proceed to decide the disputed facts.

7. Mr.Pandya, learned counsel for the respondent workman

though tried to contest the submissions made by Mr.Munshaw, learned counsel for the petitioner employer, but was unable to say anything contrary to the judgement of the Supreme Court. In the matter of Municipal Corporation of Delhi (supra), the Apex Court has observed that the Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute bonus so adjudicated on that basis in exercise of its powers under sec.33-C-2 of the Act. The Apex Court also observed that it is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation, or enforcement thereof, some ambiguity requires interpretation. That the interpretation is treated as incidental to the Labour Court's power under sec.33-C-2 like that of the executing court's power to interpret the decree for the purpose of its execution. In the present matter, the learned Labour Court firstly proceeded with the inquiry into the entitlement and only thereafter, had passed orders in favour of the workman. Such powers, according to the Supreme Court, are not available with the Labour Court.

8. For the reasons aforesaid, I must hold that the Labour

Court could not proceed with the recovery application.

9. The petition is allowed. The impugned order / award passed / made by the learned Labour Court deserves to and is accordingly quashed. Rule is made absolute. No costs.

(R.S. GARG, J.)

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